

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JAMES MACHAUF,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20-00515-CV-W-____
)	
PATRICIA A. BROWN,)	
)	
Defendant.)	

**NOTICE OF REMOVAL TO
FEDERAL COURT**

Pursuant to 28 U.S.C. § 1442, 1446, 2679(d)(2), putative defendant the United States of America, as the real party in interest for Patricia A. Brown (“United States”), respectfully notifies and informs the United States District Court for the Western District of Missouri, Western Division, as follows:

1. On or about January 3, 2020, plaintiff James Machauf (“Machauf”) filed a PETITION FOR DAMAGES in the Circuit Court of Jackson County, Missouri, commencing a civil action against Patricia A. Brown, *Machauf v. Brown*, Case No. 2016-CV00701 (“the State Court Action”). Copies of the aforementioned PETITION FOR DAMAGES as well as a the CaseNet docket sheet the State Court Action are attached hereto as **EXHIBIT A** and **EXHIBIT B**, respectively.

2. In the State Court Action, Machauf alleges state law tort claims of libel [Count I] and intentional infliction of emotional distress [Count II] against Ms. Brown based on actions taken by Ms. Brown in the performance of and as part of her employment with the Department of Veterans Affairs (“VA”), a cabinet-level department within the Executive Branch of the federal government..

3. At all times relevant to the allegations contained in Machauf's PETITION FOR DAMAGES, Ms. Brown was an employee of the VA and all acts, incidents, or omissions of Ms. Brown as alleged in Machauf's PETITION FOR DAMAGES arose out of and/or were within the general scope of Ms. Brown's employment with the VA. To that end, pursuant to 28 U.S.C. § 2679(a), (d)(2), and the Appendix to 28 C.F.R. § 15.3, the designee of the United States Attorney for the Western District of Missouri has duly certified that Ms. Brown, at all times material to the allegations set out in the State Court Action, was acting within the scope of her duties as an employee of the VA and, accordingly, is deemed by the United States to be an "employee of the government" who was "acting within the scope of [her] office or employment" for purposes of 28 U.S.C. § 2679 and other provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346, *et seq.* ("FTCA").¹

4. Inasmuch as, at all relevant times to the allegations raised in the State Court Action, Ms. Brown was acting within her scope of her employment as an employee of the federal government, Machauf's state law tort claims are cognizable, if at all, exclusively and only under the FTCA. *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991). Consequently, the State Court Action lies within the exclusive jurisdiction of the federal district courts, 28 U.S.C. §§ 1346(a)(2), 1346 (b)(1), and, as a consequence, is immediately removable to federal district court. 28 U.S.C. § 1442(a)(1) 2679(d)(2) (following certification, "any civil action or proceeding commenced in . . . a State court shall be removed without bond at any time before trial").

5. Accordingly, pursuant to 28 U.S.C. §§ 1441, 1442 and 1446, this case is hereby removed to the United States District Court for the Western District of Missouri and said Court now has jurisdiction over this action.

¹ A motion to substitute the United States as the named defendant in place of Ms. Brown is being filed with this Court upon and following removal.

6. Furthermore, inasmuch as the State Court Action was filed in Jackson County, Missouri, this case must be removed to the Western Division of the United States District Court for the Western District of Missouri. 28 U.S.C. §§ 105(b)(1), 1442(a), 1446(a).

7. A WRITTEN NOTICE OF FILING OF REMOVAL, directed to the state court, Machauf's attorney, and Ms. Brown's personal attorney will be filed promptly with the state court after the filing of this pleading.

WHEREFORE, putative defendant the United States of America, as the real party in interest for Patricia A. Brown, requests that the United States District Court for the Western District of Missouri, Western Division, forthwith assume full jurisdiction over the cause as provided by law.

Respectfully submitted,

Timothy A. Garrison
United States Attorney

By */s/ Jeffrey P. Ray*

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ATTORNEYS FOR DEFENDANT PUTATIVE
DEFENDANT THE UNITED STATES OF
AMERICA (as the real party in interest for Patricia
A. Brown)

CERTIFICATE OF SERVICE

The undersigned Deputy United States Attorney hereby certifies that a true and correct copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** was electronically filed with the Clerk of the Court using the CM/ECF system on this 25th day of June, 2020. In addition, pending the opening of the case by the Clerk's office, a true and correct copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** was electronically mailed to:

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ATTORNEYS FOR DEFENDANT PATRICIA A. BROWN

on this 25th day of June, 2020.

/s/ Jeffrey P. Ray
Jeffrey P. Ray
Deputy United States Attorney